

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2002-263-T - ORDER NO. 2002-804

NOVEMBER 25, 2002

IN RE: Application of Upstate Storage Partners, LLC,) ORDER GRANTING
4605 Dairy Drive, Suite B, Whitlee Court,) CLASS E CERTIFICATE
Greenville, SC 29607 for a Class E Certificate)
of Public Convenience and Necessity.)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Upstate Storage Partners, LLC (Upstate or the Company) for a Class E Certificate of Public Convenience and Necessity to transport commodities as follows:

Household Goods, As Defined in R. 103-210(3):

Between points and places in Cherokee, Greenville, Spartanburg, Oconee, Pickens, Laurens, Union and Anderson Counties, South Carolina.

The Commission's Executive Director instructed Upstate to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Petitions to Intervene or Protests were filed. The Company filed affidavits showing that it had complied with the instructions of the Executive Director.

A hearing on the Application was held on November 7, 2002 at 10:30 AM in the offices of the Commission. The Honorable Mignon Clyburn presided. The Company was represented by Rivers S. Stilwell, Esquire. The Commission Staff was represented by F. David Butler, General Counsel. Upstate presented the testimony of Edward D. McCrady,

Miles D. Russ, David Blake, and Joan Herlong. The Commission Staff presented the testimony of L. George Parker, Jr., Manager of the Commission's Transportation Department.

The Company wants to establish a business moving and storing PODS (Portable on Demand Storage), a concept which we had previously declared to entail the movement of household goods, and thus subject to being certificated by this Commission. See Order No. 2001-1141 issued on December 21, 2001 in Docket No. 2001-330-T. As David Blake testified in this proceeding, the Company furnishes large portable containers, known as "PODS," to persons at their homes or businesses for storage of any items that they deem appropriate, including household goods. Once loaded by the householders, the PODS are then transported by the Company to either a storage facility, or to other locations, including residences. The PODS are also unpacked by the individual homeowners. (Blake also testified at the hearing in Docket No. 2001-330-T.)

We would note that in this case, the Company wishes to move PODS between points and places in Cherokee, Greenville, Spartanburg, Oconee, Pickens, Laurens, Union, and Anderson Counties, South Carolina. The Company presented Joan Herlong as a shipper witness. Ms. Herlong, a residential realtor with Prudential Realty in Greenville, testified to participating in some fashion in real estate transactions in all of the requested counties in this case. According to Ms. Herlong, Upstate and its PODS will present the possibility of significant savings to consumers in those counties in moving. The Company will present an alternative to traditional moving services in the proposed counties. Ms. Herlong notes that, among other things, most traditional movers cannot

provide rapid service with little notice like Upstate could, if it was certificated to move its PODS. Also, PODS offer short term flexibility in the movement of household goods. Ms. Herlong's position was therefore that the public convenience and necessity demanded that we grant the requested Certificate to Upstate.

Miles Russ, a co-owner of the Company, testified that he co-owned another PODS franchise in Atlanta, and that revenue has exceeded expectations in the four months that the Company has been operating there. Russ testified as to the capitalization of Upstate, and that the Company was in negotiation with possible managers.

Ed McCrady, the other co-owner of the Company, stated that the Company had a 40,000 square foot warehouse in Atlanta, with a three year lease, and that the Company intended to negotiate a similar lease for a warehouse in Greenville, South Carolina. Although the Company presently owns no trucks, McCrady stated that the Company intended to purchase and/or lease two trucks and a forklift and other equipment upon certification by the Commission. Further, according to McCrady, the company's drivers will undergo a major training program before being allowed to drive equipment for the Company. Finally, McCrady pledged to furnish this Commission with a resume of the manager of the Company that it intended to hire.

L. George Parker, Jr., Manager of the Commission's Transportation Department also testified as to his investigation of the Company and his tour of the Company's existing facilities. Parker found nothing negative with regard to the Company.

S.C. Code Ann. Section 58-23-590(C)(Supp. 2001) states that this Commission shall issue a common carrier certificate of public convenience and necessity if the

applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the Commission's regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

Upon consideration of this matter, we find that the Applicant, Upstate Storage Partners, LLC has demonstrated that it is generally fit, willing, and able to perform the services sought by the Application. The testimony of Mr. Russ and Mr. McCrady reveals that Upstate is generally fit, willing, and able under the standards contained in 26 S.C. Regs. 102-133. Further, we find that the testimony of Joan Herlong, as well as the co-owners of the Company, indicate that the proposed service is required by the present public convenience and necessity.

With regard to the "able" criteria, found in 26 S.C. Regs. 102-133(1)(b) (Supp. 2001), we would note that this portion of the regulation requires an applicant to demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying, and has appropriate insurance policies. The co-owners of the Company testified that they did not own, nor had they leased said equipment, nor did they possess insurance policies accordingly. Normally, this Commission would find this to be an impediment to approving a Certificate of Public Convenience and Necessity. However, in this instance, we waive this part of the regulation. The co-owners testified that they would either purchase or lease the needed equipment, if they were certificated by this Commission. We found this testimony to be credible, and, also, that the Company is fit financially to either purchase or lease the

needed equipment after certification. Accordingly, this portion of Regulation 102-133 is hereby waived at this time.

Based upon the record before us and the statutory requirements along with the guidelines contained in the Commission's regulations, we find sufficient evidence to grant the Application, and therefore grant authority to Upstate Storage Partners, LLC in the form of a Class E Certificate of Public Convenience and Necessity for the movement of household goods as follows:

Household Goods, As Defined in R. 102-210(1):

Between points and places in Cherokee, Greenville, Spartanburg, Oconee, Pickens, Laurens, Union and Anderson Counties, South Carolina.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

We would note that the Company requested amendment of its Application to reflect its new organization as a Georgia company with an address of 2750 Breckinridge Boulevard, Suite 300, Duluth, Georgia 30096. We grant the amendment, but would require Upstate to provide proof of its registration as a Foreign Corporation in South Carolina before a Certificate of Public Convenience and Necessity is issued.

IT IS THEREFORE ORDERED:

1. That the Application of Upstate Storage Partners, LLC for a Class E Certificate of Public Convenience and Necessity be, and is hereby approved for authority to transport household goods between points and places in Cherokee, Greenville, Spartanburg, Oconee, Pickens, Laurens, Union and Anderson Counties.

2. Upstate Storage Partners, LLC shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Upstate Storage Partners, LLC authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director
(SEAL)